IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 6487 of 1999
To
FIRST APPEAL No. 6496 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

KESHABHAI HIRABHAI PATEL & 3 - Appellant(s)
Versus
EXECUTIVE ENGINEER & 1 - Defendant(s)

==========

Appearance :
MR AM DAGLI for MR YOGESH S LAKHANI for Appellant(s) : 1 - 4.
MS HANSA PUNANI A.G.P. for Defendant(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 07/09/2006

ORAL COMMON JUDGMENT

1. This group of appeals are filed by the original claimants against the judgment and award dated 9th April,

1999 passed by the learned Assistant Judge, Sabarkantha at Himmatnagar in Land Reference Case Nos. 3375 of 1989 to 3384 of 1989. The Land Reference Case No. 3380 of 1989 is treated as main Land Reference Case by the learned Judge. Hence, all these appeals are heard together and now they are being disposed of by this common judgment.

2. The appellants are the owners of the agricultural lands situated in sim of village Kishorpura in Taluka Modasa. They were sought to be acquired under the provisions of the Land Acquisition Act [hereinafter referred to as the "Act"] for the public purpose, mainly, for construction of Himmatnagar-Dhansura road. The Notification under Section 4 of the Act was published in the Government Gazette on 11th August, 1983, but the same was subsequently amended on 26th July, 1984. Thereafter, the declaration under Section 6 of the Act was made published. After completing the requisite formalities under the Act, the Special Land Acquisition Officer made the award on 11th March, 1986. He determined compensation at the rate of Rs.150 per Are for non-irrigated land and Rs.200 per Are for irrigated land. Since the appellants were not satisfied with the rate of compensation awarded to them, they submitted an application under Section 18 of the Act to the Collector for making Reference to the District Court, for enhancement of the compensation. The

References were accordingly made, which has resulted into the aforesaid Reference Cases. Before the learned Assistant Judge, at Himmatnagar, the appellants produced documentary as well as oral evidence to substantiate their claim. Before the learned Judge, they claimed compensation at the rate of Rs.20 per sq. mtr., i.e., at the rate of Rs.32,000=00 per acre. It was contended by the appellants that the Special Land Acquisition Officer failed to keep in view certain relevant aspects for determination of just and proper compensation and that has resulted into miscarriage of justice. It is contended that considering the fertility of the land and also the N.A., potentiality, the rate of compensation ought to have been determined on higher side. They also contended that because of severance of the land, on account of acquisition, the land which has remained with the appellants has become useless for the purpose of agriculture. The grievance is that this aspect has not been taken into consideration by the Special Land Acquisition Officer. They also contended that no compensation for the fruits of the trees that were grown on the land in question has been paid to them. Hence, it was prayed that the Reference Court may determine appropriate rate of compensation by keeping in view the aforesaid factors.

3. The claim of the appellants was contested by the

respondents by filing written statements. They denied that the land that remained with the appellants was not fit for the purpose of agriculture. They contended that the amount claimed by the appellants for compensation was highly exaggerated and no compensation could be paid at that rate. They also contended that the Reference applications were barred under the law of limitation and principle of estoppel and they ultimately, prayed that the References Cases be dismissed with costs.

3.1. At the end of the proceedings the Tribunal based the award on documents that were produced at Exh. 25 and Exh. 36. Exh. 25 is the judgment in respect of the land situated at village Bhesavada, whereas Exh. 36 is the judgment relating to land situated at village Shinol. The learned Judge arrived at a conclusion that the compensation determined by the Special Land Acquisition Officer was on lower side and it required upward revision. In his opinion, the lands in question be safely compared with the land situated at village Shinol. Exh. 36 revealed that for non-irrigated land Rs.350 [Rs.500] per Are was determined as the just compensation, whereas for irrigated land it was Rs.366 [Rs.580] per Are. The learned Judge, was however of the opinion, that in the present case, Notification under Section 4 of the Act was issued on 26th July, 1984, whereas Notification under Section 4 of the Act in respect of land forming subject

matter at Exh. 36 was of 30th January, 1989. Therefore, there was a gap of about four and half years. The learned Judge, keeping in view the gap, deducted 30% from the aforesaid rate for fixing the rate of compensation of the land in question. By doing such exercise, the learned Judge awarded additional amount of Rs.200=00 per Are for non-irrigated land and Rs.166=00 per Are for irrigated land. Adding to the rate fixed by the Special Land Acquisition Officer, the rate would come to Rs.350 [Rs.500=00] per Are for non-irrigated land and Rs.580=00 [Rs.366] per Are for irrigated land. He also awarded additional 12% of the market value of the land in question for the period from the date of Notification under Section 4 of the Act to the date of taking over the possession or the date of the award, whichever was earlier. He also ordered the respondents to pay 30% Solatium on market value and extra interest at the rate of 9% per annum for the year from the date of taking over the possession and thereafter at the rate of 15% per annum till the date of realization on the additional amount.

4. The appellants have challenged the rate of compensation determined by the learned Judge on the ground that it is inadequate. The appeals have been filed on three grounds as stated above. I have heard learned advocate Mr. A.M. Dagli for Mr. Y.S. Lakhani learned

advocate for the appellants and Ms. Hansa Punani learned A.G.P., for the respondents. Mr. Dagli has contended that 30% deduction made by the learned Judge is much on higher side and at best it could have been 10% and not more than that. He has further submitted that the learned Judge has not awarded any amount for the loss suffered by the appellants for the lands which remained with them and had become unfit for agriculture for the reason of acquisition by the lands in question. In other words, according to Mr. Dagli, because of the severance of the land on account of acquisition, the land which is remained with the appellants have been rendered unfit for agricultural purpose. He has further submitted that no compensation has been awarded for the fruits grown on the trees standing on the acquired lands. As against that Ms. Punani learned A.G.P., has supported the judgment. She has also drawn my attention to the map which has been prepared and produced by the Government, as per the direction of this Court, to show that reliance placed by the learned Judge in the judgment in respect of land of village Shinol is just and proper, because it is just adjoining to the boundary of village Kishorpura. She further submitted that the appeals are required to be dismissed.

5. Having considered the rival submissions and having perused the record and proceedings of these

appeals, it becomes clear that the lands which were acquired at the relevant time were agricultural lands. It is also not disputed that while acquiring the lands appropriate proceedings under the Act was followed. These appeals have been restricted only to the issue regarding just and proper compensation.

6. To substantiate their say at the hearing of the proceedings, one Hirabhai Shivabhai Patel was examined at Exh. 44 on behalf of the appellants. He has stated that touching their village there are lands of village Shinol and to the east of village Shinol lands of village kolikhad. He has stated that the lands of village Kishorpura have more fertility than the lands of village Shinol and village Kolikhad. He has further stated that availability of subsoil water resources is more in village Kishorpura than in village Shinol and Kolikhad. He has also produced at Exh. 45 the judgment in respect of acquisition of lands situated at village Kolikhad, whereby the concerned Court had granted Rs.9.50 paise per sq. mtr., for irrigated lands and Rs.7.50 paise per sq. mtr., for non-irrigated lands. In the cross-examination, he has stated that it was not true that there was a considerable distance between village Kolikhad and village Kishorpura. He also denied that he has not seen the lands of village Shinol and village Kolikhad. He has admitted that he had not got done any test for

determining the fertility of land of village Shinol and village Kolikhad. He has denied that the lands of village Kishorpura are of inferior quality than the lands of village Shinol and village Kolikhad. Except this witness, no other witness has been examined by the appellants. On behalf of the respondents no oral evidence has been led. It may be noted here that Exh. 25 and Exh. 36 which are the judgments in respect of the acquisition of lands at village Bhesavada and village Shinol, were produced by the appellants but by submitting purshis at Exh. 48 they declared that they would not rely on these two judgments. The learned Judge has, however, ignored this declaration and in paragraph 10 of his judgment, he has given adequate reasons for placing reliance on Exh. 36, which is pertaining to the lands situated at village Shinol. It is an admitted position that village Shinol is adjoining to village Kishorpura. The lands of village Shinol were acquired for Najum Irrigation Project and in the year 1989 the process of acquisition had commenced by issuance of Notification under Section 4 of the Act. The proceedings arising from that acquisition came to be decided earlier by the Court of law than the present proceedings and the judgment was thereafter produced at the hearing of this case. The learned Judge did not place reliance on, at Exh. 45 which was relating to the acquisition of the lands at village Kolikhad and it was produced by the witness simply on the ground that the

said village was at a distance of about 3 ½ kms., whereas village Shinol was just adjoining to village Kishorpura and in my opinion, reliance placed by the learned Judge on Exh. 36 was, therefore, proper and he was justified in his opinion in keeping the judgment in view in spite of the fact that the appellants did not press it, because the same enabled him to arrive at a proper figure for compensation. The learned Judge has deducted 30% from the rate prescribed in Exh. 36 on the ground that Notification under Section 4 of the Act in the present case was about 4 ½ years earlier than the one in respect of the lands forming the subject matter of Exh. 36. So far the deduction itself is concerned, I do not see any error having been committed by the learned Judge. However, it appears that the deduction at the rate of 30% is slightly on higher side. Considering the circumstances existed on record, in my opinion, it ought to have been at the rate of 20%. To that extent the finding regarding deduction is required to be modified. So far other two contentions of the appellants mainly, compensation for severance of the land and also for fruits are concerned, the learned Judge was justified in ignoring them, because except making statement in the pleadings, no material has been produced by the appellants to substantiate these aspects. Not only that, but the sole witness examined on behalf of the appellants has not spoken a word about it. In view of the same, I do not see any error having been

committed on that count. The net result of the aforesaid discussion is that deduction of 30% made by the learned Judge is required to be modified to 20% and now it is decided that the appellants will be entitled to receive additional compensation on the basis of 20% deduction i.e. Rs.520.01. Rest of the directions give by the learned Judge will remain the same. These appeals are partly allowed with no order as to costs.

R & P to be re-transmitted to the trial Court forthwith.

[Akshay H. Mehta, J.]

/phalguni/